

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 6/25/98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sommer

Serial No. 75/005,016

John M. Keene of Graham, Campaign for applicant.

Ellen Awrich, Trademark Examining Attorney, Law Office 109
(Deborah S. Cohn, Managing Attorney).

Before Seeherman, Quinn and Walters, Administrative
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Sommer, a French joint stock company, to register the mark FRENCH-COURT for "clay court surface material for tennis courts."¹

The Trademark Examining Attorney has refused registration under Section 2(e)(2) of the Trademark Act on the ground that applicant's mark, if applied to applicant's goods, would be primarily geographically descriptive of them.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs.² An oral hearing was not requested.

Applicant concedes that the term FRENCH is the adjectival form of the word FRANCE, and that the latter term is the name of a country that is well known to the people of the United States. Applicant also acknowledges that its goods originate in France. However, applicant argues, in urging that the refusal be reversed, that the mark is suggestive of the nature or quality of the goods rather than describing the geographic origin of the goods. In this connection, applicant contends that the mark suggests "that the goods are clay tennis court surfacing materials of a quality equal to those which Americans are used to seeing in televised highlights from the annual French Open tennis tournament." (brief, p. 8) In addition to the common knowledge that the French Open is the only annual tennis event that is played exclusively on clay courts, applicant asserts that clay courts are commonplace throughout Europe.

¹ Application Serial No. 75/005,016, filed October 13, 1995, alleging a bona fide intention to use the mark in commerce.

² Applicant attached an exhibit to its brief. The Examining Attorney, in her brief, objected to this late submission. Trademark Rule 2.142(d) provides that the record in the application should be complete prior to the filing of an appeal and that the Board will ordinarily not consider additional evidence filed with the Board after the appeal is filed. Inasmuch as the exhibit was filed late, the Examining Attorney's objection is well taken and we have not considered the exhibit in reaching our decision. We hasten to add that even if the exhibit were considered, we would reach the same result in this case.

Applicant also contends that the nature of the goods involved here will require consumers, upon encountering applicant's mark, to engage in a more complex thought process, making them less likely to immediately discern the primary geographic significance of the mark. This, according to applicant, is to be contrasted with simple or prepackaged goods which are easily and quickly transported in commerce, such that consumers would immediately glean the primary geographic significance of marks used on those goods. Applicant asks that any doubt in this appeal be resolved in its favor in accordance with existing case law.

The Examining Attorney contends that the term "FRENCH" is equivalent to "FRANCE" for purposes of the Section 2(e)(2) analysis, that France is generally known to the public as a geographic location, and that a goods/place association is presumed from the fact that applicant's goods come from France. In support of the refusal, the Examining Attorney submitted dictionary listings for the terms "French" and "court," as well as excerpts retrieved from the NEXIS database bearing on France's notoriety for its clay tennis courts. The Examining Attorney addresses in detail each of applicant's arguments, maintaining that the refusal to register should be affirmed.

In order for registration to be properly refused under Section 2(e)(2), it is necessary to show that (i) the mark

sought to be registered is the name of a place known generally to the public, and that (ii) the public would make a goods/place association, that is, believe that the goods for which the mark is sought to be registered originate in that place. See: In re California Pizza Kitchen, Inc., 10 USPQ2d 1704 (TTAB 1988), citing In re Societe Generale des Eaux Minerales de Vittel S.A., 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987). Where there is no genuine issue that the geographical significance of a term is its primary significance and where the geographical place is neither obscure nor remote, a public association of the goods with the place may ordinarily be presumed from the fact that the applicant's own goods come from the geographical place named in the mark. See: In re Handler Fenton Westerns, Inc., 214 USPQ 848 (TTAB 1982).

The term "French," as defined in *Webster's Ninth New Collegiate Dictionary*, means "of, relating to, or characteristic of France, its people, or their language." The term "court," as defined in the same dictionary, means "a quadrangular space walled or marked off for playing one of various games with a ball (as lawn tennis, handball, or basketball) or a division of such a court."

As noted above, applicant concedes that "the term FRENCH is the adjective of the word FRANCE, and that the latter is the name of a country that is well-known to the

people of the United States...." (brief, p. 2) Indeed, we have no doubt that the primary significance of the term "FRENCH" in applicant's mark is geographical and that France is neither an obscure nor a remote geographical place. See *In re Compagnie Generale Maritime*, 993 F.2d 841, 26 USPQ2d 1652 (Fed. Cir. 1993)[FRENCH LINE, for a wide variety of goods and services, is primarily geographically descriptive or primarily geographically deceptively misdescriptive depending on whether or not the goods and services came from France].

In addition, applicant is located in France and applicant "does not dispute the fact that its goods originate in France." (brief, p. 6) Thus, a goods/place association may be presumed in this case. However, an even stronger case of a goods/place association is established by the evidence of record here. The NEXIS articles provided by the Examining Attorney show that clay tennis courts are associated with France, and that the French Open, one of the major tennis tournaments in the world, is played on clay courts.

The mere addition of the highly descriptive/generic word "COURT" does not detract from the primary significance of FRENCH-COURT when the mark is considered as a whole. In *re Chalk's International Airlines Inc.*, 21 USPQ2d 1637, 1639 (TTAB 1991). Further, as the Board has stated in the past,

the determination of registrability under Section 2(e)(2) should not depend on whether the mark is unitary or composite. In re Cambridge Digital Systems, 1 USPQ2d 1659, 1662 (TTAB 1986).

We have considered applicant's other arguments, but find them to be entirely unpersuasive for the reasons essentially given by the Examining Attorney. We fully agree with the Examining Attorney's rationale in distinguishing the present case from the case principally relied upon by applicant, In re John Harvey & Sons Ltd., 32 USPQ2d 1451 (TTAB 1994).

We conclude that purchasers are likely to believe that FRENCH-COURT is primarily geographically descriptive in that it identifies the geographic source of applicant's clay court surface material for tennis courts.

Decision: The refusal to register is affirmed.

E. J. Seeherman

T. J. Quinn

C. E. Walters
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

Ser No. 75/005,016